

DECISION



18873 Wetherborn
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-201642

DATE: July 22, 1981

MATTER OF: Four-Phase Systems, Inc.

DIGEST:

1. References to multiple central processing units (CPU) in mandatory requirements is not in conflict with designation of duality (use of two CPU's to divide total workload) as desirable feature, since system can use multiple CPU's without meeting requirements for duality.
2. Requirements for system test are not unclear. Whether test is labeled operational capability demonstration or benchmark is irrelevant.
3. Protester has not met burden of showing that agency's requirements were in excess of minimum needs or that requirements unduly restricted competition.
4. Agency refusal to extend closing date for receipt of proposals was not arbitrary or capricious and did not unduly restrict competition.

Four-Phase Systems, Inc. (Four-Phase), protests request for proposals (RFP) No. DTFA01-80-R-31147 for computer systems for 10 automatic data processing centers issued by the Federal Aviation Administration (FAA), Department of Transportation. Four-Phase alleges that the RFP contains defective and ambiguous requirements, unduly restricts competition and does not include all costs that should be evaluated. Four-Phase also alleges that the FAA improperly refused to answer Four-Phase's questions concerning the solicitation and refused to extend the closing date for receipt of proposals.

We do not consider the protest to have merit.

[Protest Alleging That RFP Contains Defective and Ambiguous Requirements]

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Ambiguous Requirements

Four-Phase contends that several sections of the RFP are ambiguous. For example, Four-Phase argues that, while "duality" is considered a desirable feature and is not a mandatory requirement, there are numerous references to duality in the mandatory requirements.

Duality refers to the use of two separate and independent computers between which the total workload is divided. The desirable feature section of the RFP provides a detailed description of how the computers must interact in order to qualify as dual. The mandatory requirements that allegedly refer to duality, in fact refer only to multiple central processing units (CPU's). The FAA states that a system qualifying as dual, of course, would use multiple CPU's. However, a system could propose multiple CPU's, yet not meet the requirements for duality. Both systems would be required to meet the mandatory requirements for systems using multiple CPU's.

We agree with the FAA's reading of the RFP and see no ambiguity or conflict in those sections.

Four-Phase also contends that the solicitation is unclear as to whether an operational capability demonstration (OCD) or a benchmark is required to be performed. According to Four-Phase, the confusion arises because section F.7 of the RFP, which describes the OCD, refers to performance standards in section F.6, and performance standards are normally associated with benchmarks.

The Four-Phase dispute seems to be more concerned with the appropriate labeling of the system test rather than the clarity of the testing requirement. We think that the RFP clearly states in section F.8 what must be demonstrated and in section F.7 how it is to be demonstrated. In any event, the RFP provides that only offerors found to be technically acceptable and in the competitive price range will be invited to perform an OCD. Since Four-Phase's proposal was found to be technically unacceptable, it could not be prejudiced by an ambiguity in the OCD requirement.

Restrictive Requirements

Four-Phase argues that numerous requirements restrict competition. According to Four-Phase, some of those requirements are in excess of the FAA's minimum needs or require one approach when several alternatives would work as well.

The determination of the Government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. On-Line Systems, Inc., B-193126, March 28, 1979, 79-1 CPD 208; METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. This is particularly the case when highly technical supplies or services are involved as in the case here. Therefore, our Office will not question agency decisions concerning those matters unless they are shown to be clearly unreasonable. Particle Data, Inc.; Couler Electronics, Inc., B-179762; 178718, May 15, 1974, 74-1 CPD 257. A mere difference of opinion between the protester and the agency concerning the agency's needs is not sufficient to upset agency determinations. Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214. The protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

Regarding restrictions on competition, while needs should be determined so as to maximize competition, we have held that requirements which limit competition are acceptable so long as they are legitimate agency needs and a contract awarded on the basis of those needs would not violate law by unduly restricting competition. Educational Media Division Inc., B-193501, March 27, 1979, 79-1 CPD 204.

Four-Phase's primary complaint is that the RFP expresses an unjustified preference for large CPU's in each region when a distributed processing system

using minicomputers would satisfy the FAA's functional needs just as well. Four-Phase lists three specific requirements which, it argues, illustrate the problem. Four-Phase alleges that offerors are not permitted to locate software in devices other than the mainframe computer. Also, all editing must occur at the mainframe computer, rather than on a separate controller. Finally, Four-Phase argues that because no on-line storage requirements are specified for each individual software product, the implication is that functions such as word processing and data entry cannot be performed locally.

The FAA points out that there are no specific restrictions in the RFP prohibiting either software location in peripheral hardware or editing on a separate controller. The RFP did not specify quantities for on-line storage capacity because the quantities were not known at the time. No implication should be drawn from this. The agency states that a CPU is necessary in each region in order to meet its present and future needs for computing capacity. These needs were set forth generally in the FAA's Management Information ADP Support Plan of February 1, 1979. That document was presented to the General Services Administration (GSA) in support of the FAA's request for a delegation of procurement authority (DPA) to purchase the systems, which was granted. According to the FAA, there is no prohibition against distributed processing so long as the system proposed offers a CPU in each region.

Four-Phase has not met its burden of showing that the FAA's needs are unreasonable. The FAA determined that its present and future data processing needs would require the computing capacity represented by the 10 CPU's as described by performance characteristics in the RFP. This determination was submitted to GSA in the DPA application and was approved. Four-Phase's argument concerning a prohibition against distributed processing is really an argument about the amount of computing capacity needed by the FAA, not about alternate means of meeting those needs, since distributed processing is not foreclosed by having a CPU in each region. Four-Phase has not provided evidence that the FAA's needs could be met with smaller computer capacity.

Four-Phase also argues that requiring the same make and model removable disk pack and requiring a 132-character-wide cathode ray tube (CRT) display tube are restrictive requirements. Concerning the disk pack, Four-Phase argues that vendors should be permitted to offer the appropriate disk within their product lines. Regarding the CRT display, Four-Phase states that 80-character-wide displays are the industry standard.

The FAA states that requiring the same make and model removable disks is needed to permit transportability and compatibility. That is, if one computer fails, the disks can be transferred to another. This has the advantage of keeping wasted personnel hours to a minimum when equipment fails. The FAA points out that all major suppliers of computer systems, including Four-Phase, offer removable disk packs and are permitted to offer their own brand so long as all are the same model. The FAA states that it presently is using 160 x 64 character CRT's and has reduced its requirements as far as possible in order to broaden competition.

Again, the FAA has provided a basis for its equipment needs and Four-Phase has not shown it to be unreasonable. In fact, Four-Phase apparently meets one of the requirements that it claims is restrictive.

We have examined the remainder of Four-Phase's allegations of restrictive requirements and find that FAA's determination of its minimum needs has not been shown to have been unreasonable.

FAA's Refusal to Extend Closing Date

The RFP was issued on October 28, 1980, with a closing date of December 23, 1980. By letter of December 17, received by FAA on December 18, Four-Phase notified the FAA that, while it had not previously intended to submit an offer because it could not meet the hardware requirements of the RFP,

it was in the process of acquiring a company that produced appropriate hardware. However, Four-Phase did not have sufficient time to prepare a proposal. Four-Phase requested a 2-month extension of the closing date, answers to three pages of questions concerning the solicitation and an opportunity to make an oral presentation prior to the closing date.

By letter of December 19, 1980, the FAA refused to grant the extension and refused to answer the questions. According to the FAA, it felt that 56 days was a sufficient time to prepare a proposal and that a delay in the procurement was not in the Government's best interest. Also, the FAA felt that it did not have the time necessary before the closing date to answer Four-Phase's questions.

Four-Phase contends that the FAA's refusal to answer the questions and to extend the closing date was violative of the general requirement to maximize competition.

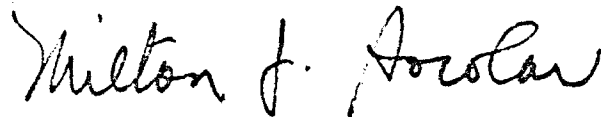
The determination of a date for receipt of proposals is a matter of judgment properly vested in the contracting officer and we will not substitute our judgment unless the agency's determination was arbitrary or capricious. National Small Business Association, B-184052, September 26, 1975, 75-2 CPD 196. Our concern is whether the contracting officer's actions unduly restricted competition. Solar Resources, Inc., B-193264, February 9, 1979, 79-1 CPD 95. We have recognized, however, that the proposal due date need not be extended merely to increase the opportunity for competition by accommodating a firm that has indicated interest in submitting an offer. Serv-Air, Inc., B-194717, September 4, 1979, 79-2 CPD 176; Dyneteria, Inc., B-181589, October 29, 1974, 74-2 CPD 230.

Here, the contracting officer's actions were not arbitrary or capricious. We agree that there was ample time for submitting questions in a timely manner and for preparation of proposals. Four-Phase's lack of time for proposal preparation was due solely to its business decisions and not to any action, intentional or otherwise, on the Government's part.

Additionally, there was adequate competition here, since four proposals were received, of which two were in the competitive range.

Four-Phase has also argued that the FAA should consider conversion costs and option prices in its cost evaluation. However, since Four-Phase's proposal was found to be technically unacceptable based on its inability to meet hardware requirements that we have found to be nonrestrictive, it is unnecessary to address those issues.

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Aorolan".

Acting Comptroller General
of the United States